Supreme Court, U.S.
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No. 90-1948

In the Supreme Court of the United States.

October Term, 1990

MARY T. RAM
Petitioner

v.

COMMONWEALTH OF MASSACHUSETTS,
DEPARTMENT OF TRANSPORTATION,
COMMONWEALTH OF MASSACHUSETTS,
DEPARTMENT OF PUBLIC WORKS,
TOWN OF CHARLTON
Respondents

ON PETITION FOR WRIT OF CERTIORARI TO THE
SURPREME JUDICIAL COURT
OF MASSACHUSETTS

STATE RESPONDENTS' BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether a Masschusetts statute hich waives sovereign immunity and reates a cause of action for plaintiffs ho are injured due to road defects, rovided that plaintiffs give notice of njury within thirty days, is consistent ith the due process provisions of the nited States Constitution.

2. Whether this Court should onsider the constitutionality of a ssachusetts statute limiting the ount of damages in cases of injuries sulting from road defects, where that sue was neither before the court below r decided by it.

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within thirty days of the event. Although this notice requirement is a condition precedent to filing suit, the actual statute of limitations for such a suit is three years from the date of injury.

REASONS FOR DENYING THE PETITION

Under Supreme Court Rule 10, "[a] review on writ of certiorari is not a matter of right but of judicial discretion, [and] will be granted only where there are special and important reasons therefore." The purpose of certiorari jurisdiction is to permit the Court to select cases "of such gravity and general importance" as to warrant plenary review. In Re Woods, 143 U.S. 202, 206 (1892).

For the reasons set forth below, Ram's petition does not satisfy the traditional criteria which guide the Court's discretionary review. Accordingly, the petition should be denied.

I. THE DECISION OF THE COURT BELOW IS CONSISTENT WITH APPLICABLE DECISIONS OF THIS COURT

Ram seeks review pursuant to Rule 10.1(c) of this Court, allowing review "when a state court or a United States court of appeals has decided an important question of federal law which has not been, but should be, settled by this Court, or has decided a federal question in a way that conflicts with applicable decisions of this Court." As will be shown below, the decision of the

Massachusetts Supreme Judicial Court is completely consistent with the decisions of this Court. Moreover, the decision below raises no unsettled federal questions.

A. The Decision Below Correctly Applies the Decisions of This Court Concerning Time Limitations in Statutes Abrogating Sovereign Immunity.

This case concerns a presentment or notice requirement contained in the very statute which waives the state's sovereign immunity and permits suits against the state under certain circumstances. It is not disputed that the statutes here at issue, M.G.L. c. 81, §18, and c. 84 §§15 and 18, create causes of action which did not exist at common law. As the court below held in this case,

> Before the statutes were enacted, all claims against government entities for injuries caused by defects in public ways were barred by the doctrine of sovereign immunity. When the Legislature waived this immunity...it established limitations and conditions on that waiver.

Ram, Pet. at 78-79, 409 Mass. at 490, 567 N.E. 2d at 213-214.

In United States v. Kubrick, 444 U.S. 111 (1979), this Court considered an essentially identical challenge to the presentment provision in the Federal Tort Claims Act, 28 U.S.C. §2401(b). The Court held:

> The Act waives the immunity of the United States and...in construing the statute of limitations, which is a condition of that waiver, we should not take it upon ourselves to extend the waiver beyond that which Congress intended See Soriano v. United States, 352 U.S. 270, 276, 77 S.Ct. 269, 273, 1 L.Ed.2d 306 (1957);

Id. at 117-118. Emphasis added.

In Soriano v. United States 352
. 270, 276 (1957), a case concerning
laim filed under 28 U.S.C. §2501 by a
eign national for reimbursement for
time service to the United States the
rt held,

> And this Court has long decided that limitations and conditions upon which the Government consents to be sued must be strictly observed and exceptions thereto are not to be implied.

at 276.

While not unmindful that this rule
on occasion create harsh results,
Court emphasized, "this Court can
orce relief against the sovereign
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gress." Id. at 277. 1/ The

Plaintiff does not claim that any
ergence of authority or confusion
ng the lower federal courts or the
te courts exists regarding the issues

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ised by the petition, and it would pear there is none. See, e.g., Fenton Citizens Savings Association. 400 F. atute creating cause of action which d not exist at common law, failure to mply with time limitation deprives urt of jurisdiction over the subject tter); Kalmich v. Bruno 553 F.2d 549, 3 (7th Cir., 1977) (limitation ntained in statute creating rights not tant at common law is not statute of mitation in normal sense and time ement is integral part of enactment); uendo v. Insurance Co. of Puerto Rico, 3 F. Supp. 1030, 1035-1036 (D.P.R., 74) (notice period for tort claims ainst municipalities does not violate e process or equal protection arantees); United States v. Southern ific Co., 210 F. Supp. 760, 762 (N.D. 1962) (expiration of time itation in statute creating right known at common law extinguishes right sue, not merely remedy); Faucher v. urn, 465 A. 2d 1120, 1124 (Me. 1983) vereign immunity abrogated only as ressly provided by statute); Budahl Gordon and David Associates, 287 N.W. 489, 493 (S.D. 1980) (Same); Herman Magnuson, 277 N.W. 2d 445, 454 (N.D. 9) (notice requirement in tort claims tute is rationally related to islative goals and does not deny al protection); Gosner v. Board of

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ubrick and Soriano is that limitations
eriods in statutes modifying sovereign
mmunity do not affect due process
uarantees (See Section "B", below).
ecause the Massachusetts statute
epresents the state's voluntary
imitation of its sovereignty, failure
o comply with the statute's notice
equirement cannot constitute a

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ommissioners for Owen County, 177 Ind.
pp. 79, 378 N.E. 2d 425, 428 (1978)
ame); Fritz v. Regents of University
Colorado, Colo., 196 Colo. 335, 586
2d 23, 25 (1978) (Same); Panko v.
unty of Cook, 42 Ill. App. 3d 912, 356
E. 2d 859, 862 (1976) (Same); Paulsey
Chaloner, 54 App. Div. 2d 131, 388 of
pp. 874, 879 (1975) (where
me-barring provision is part of very
Y.S. 2d 35, 37-38 (1976) (notice
quirement in tort claims statute does
t deny equal protection or due
ocess); 51 Am. Jur. 2d, Limitations
Actions, §15 and cases cited therein,
cluding state court decisions of
orida, Georgia, Illinois, Kansas,
ntucky, Maryland, Michigan, Minnesota,
lahoma, South Dakota, Tennessee,
rmont, Washington, Wisconsin.

deprivation of Ram's rights. Simply put, Ram has no rights without the statute, and, therefore, has no rights beyond those granted by the statute.

B. The Decision Below Correctly Applies the Decisions of This Court Applying the Due Process Clause to State-Created Property Rights.

Ram asserts that the thirty day presentment requirement violates her rights to procedural and substantive due process. In fact, as set forth above, because the statutes at issue partially abrogate sovereign immunity, the conditions of that abrogation form part of the substantive right granted and are constitutionally permissible. In arguing otherwise, Ram misunderstands this Court's cases.

Ram relies principally on Logan v. Zimmerman Brush, Co., 455 U.S. 422

Logan involved an Illinois
nt discrimination statute which
the administrative agency to
within 120 days of the filing
plaint, a fact-finding
ce to investigate the employee's
In Logan, the employee committed
dural missteps but the agency
iled to convene the required
e within the 120 day period.
ployee's subsequent suit
he employer under the statute,
ois Supreme Court upheld the
of the employer's motion to
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Court reversed the Illinois
ourt, holding that the 120-day
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but merely "a procedural
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olves a notice requirement which
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n's abrogation of immunity.[2/]

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n and the present case differ in
critical way. The 120-day
issue in Logan was clearly
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t to his own benefit. Faced
irony, this Court held that

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53-54 (1974), "[w]here
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that is wholly arbitrary or irrational." Id. at 282. Because the Massachusetts statute is neither wholly arbitrary nor irrational, the decision below is consistent with this Court's decisions and, therefore, plaintiff's petition should be denied.

Finally, Ram's claim that certiorari is warranted because her case was decided on the basis of "a short statute of limitations and not on the merits", Pet. at 2, and because the court below did not "entertain her alternative legal theory", Pet. at 42, raises no substantial federal issue and should be rejected.

The court's action was indeed decided based on her failure to comply with the notice requirements of the Massachusetts statute. But entry of judgment for failure to comply with

"procedural" steps is judicial action of the most common sort. Beyond the obvious conclusion that a litigant who fails to comply with procedural requirements is not entitled to judgment "on the merits", no more need be said.

Ram's claim that the court below "did not entertain her alternate legal theory", Pet. at 42, is equally without merit, both as a factual matter and as a ground for this Court's review. Ram's claim, in essence, is that the court below was incorrect in its decision as to which of two state statutes applied to her case. Far from not "entertaining" her claim, the court below devoted the majority of its opinion to an exhaustive analysis of the applicability of the two statutes. Ram, Pet. at 65-76, 409 Mass. at 485-489, 567 N.E. 2d at 211-213. The court's

rejection of Ram's "alternate" theory of the case does not, of course, create any federal issue for this Court's review.

II. REGARDING THE ISSUE OF DAMAGES, THIS COURT SHOULD NOT GRANT CERTIORARI REVIEW TO DECIDE AN ISSUE THAT WAS NEITHER BEFORE THE COURT BELOW NOR CONSIDERED BY IT.

Ram argues that this Court should grant certiorari to consider whether the limited damages provided for by the Massachusetts road defect statutes constitute a violation of her due process rights. Pet. 1-2, 38-39. This Court should reject Ram's petition on this issue because the question of damages was not before the court below.

This case was decided in the Massachusetts trial courts on two motions for summary judgment (one motion brought by the town and one by the state defendants) on the issue of whether her failure to provide notice within 30 days

as required by G.L. c. 84 §18 barred her action. The Massachusetts Superior Court found that her failure to provide the statutory notice did indeed bar her claim and accordingly allowed both summary judgment motions. Ram, Pet. at 61-63, 409 Mass at 483-484, 567 N.E. 2d at 210. Petitioner appealed these decisions to the Massachusetts Appeals Court and the Massachusetts Supreme Judicial Court, sua sponte, transferred the case from the Appeals Court. Ram, Pet. at 67, 409, Mass at 481, 567 N.E. 2d at 208. Thus, the only issues properly before the Supreme Judicial Court concerned the validity of the notice period contained in Massachusetts G.L. c.84, §18. Petitioner's attempt to argue the validity of the damage limitations of the road defect statutes was explicitly rejected by the Supreme Judicial Court:

> The plaintiff also contends that the $5,000 liability limit of G.L. c. 84, §15 and the $4,000 liability limit of G.L. c. 81, §18, violate equal protection and due process guarantees. Summary judgment was properly granted on the issue of liability; the issue of damages is not before us.

Ram, Pet. at 80, 409 Mass at 491, n. 9, 567 N.E. 2d 214, n.9. Emphasis added.

The issue of the validity of the statutes' damage limitations was simply not before the court. Petitioner, in essence, asks this Court to presume that the court below would have ruled in a particular way if it had considered the issue at all, which it did not. Rather, the issue remains, in effect, preserved for the Massachusetts Supreme Judicial Court to decide in an appropriate future case.4/

4/ Presumably, such a case would be one in which, at a minimum, the notice requirements were complied with and the record revealed evidence of damages beyond the statutory limit.

der these circumstances,
oner's request for certiorari
as to the issue of the
tutionality of the statute's
limitations must be denied.

CONCLUSION

r the reasons set forth above, the
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